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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-708

QUINAULT PACIFIC CORPORATION,

Petitioner,

v.

BARCLAYSAMERICAN/BUSINESS CREDIT, INC., et al.,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Eleventh Circuit

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BRIEF OF RESPONDENT BARCLAYSAMERICAN/ BUSINESS CREDIT, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: November 23, 1983

QUESTION PRESENTED

WHETHER THIS COURT WILL VACATE THE LAW OF THE CASE ESTABLISHED IN DECISIONS RENDERED BY THE FIFTH CIRCUIT COURT OF APPEALS THREE YEARS AGO, AND REOPEN THIS CASE WHICH IS NOW MOOT, A SETTLEMENT AGREEMENT HAVING BEEN ENTERED BY THE PARTIES AND A CONSENT DISMISSAL, WITH PREJUDICE, HAVING BEEN ENTERED BY THE DISTRICT COURT ON FEBRUARY 5, 1982, FROM WHICH NO APPEAL WAS TAKEN?

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See also In Re: Georgia Paneling, 588 F.2d 93, reh. granted, 581 F.2d 520 (5th Cir. 1978).

The order of the Eleventh Circuit Court of Appeals denying Quinault's Petition For Extraordinary Writ is not reported. Likewise, the Court's Order denying a rehearing and the Order denying

BarclaysAmerican's request for attorney's fees are not reported. These Orders are reprinted in the Appendix to the Petition For Writ Of Certiorari.

JURISDICTION

Jurisdiction over the matters in Quinault's Petition For Writ Of Certiorari does not lie in this Court because this case presents no live case or controversy and Quinault did not file a timely appeal from any judgment or order subject to review.

STATEMENT OF THE CASE

Introduction

On May 20, 1983, Quinault Pacific Corporation [hereinafter "Quinault"] filed

what it labeled as a Petition For Extraordinary Writ[1/] naming BarclaysAmerican/ Business Credit, Inc. [hereinafter "BarclaysAmerican"] and others, as Respondents. Quinault's Petition For Extraordinary Writ was not filed as a timely appeal from any judgment or decision which was

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1 The full title of the Petition For Extraordinary Writ was "Petition For Extraordinary Writ To Recall Mandates, Devalidate Judgments, Vacate Orders of June 3, 1980 Denying Rehearings Procured By Concealment Of Prohibited Financial Relationships Involving Bankruptcy Judge And Cousel, To Permit Filing of Independent Action, To Allow Out-Of-Time Petition For Rehearing en Banc, For Other Relief; And Memorandum."

subject to appeal. Instead, Quinault sought to have the Eleventh Circuit Court of Appeals reverse the law of the case laid down by the Fifth Circuit Court of Appeals in appeals taken by Quinault almost five years ago. The Fifth Circuit Court of Appeals had addressed and decided in earlier decisions the same issues which Quinault sought to raise anew in its Petition For Extraordinary Writ. This Court had denied certiorari in those cases. In re: Georgia Paneling, 607 F.2d 117, reh. granted, 613 F.2d 137 (1979), orig. opin. reinstated, 616 F.2d 893 (5th Cir. 1980) cert. denied. sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981); In re: Georgia Paneling, 607 F.2d 1004 (unpublished opinion) (Table 1979), reh. granted, 613 F.2d 312 (Table 1979), original order reinstated, 617 F.2d

293 (Table 1980) (5th Cir.), cert. denied. sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981). See also In re: Georgia Paneling, 588 F.2d 93, reh. granted, 581 F.2d 520 (5th Cir. 1978).

In addition to the fact that the Fifth Circuit Court of Appeals has already decided the issues raised by Quinault, the claim which Quinault seeks to resurrect has been compromised, settled and dismissed, with prejudice, by Quinault.

The Eleventh Circuit Court of Appeals denied the Petition For Extraordinary Writ on June 2, 1983 and denied a request for rehearing on July 28, 1983.

History Of The Cases Involving BarclaysAmerican And Quinault

In 1974, Georgia Paneling, Inc. was declared bankrupt and John Pennington was

elected Trustee [hereinafter "Trustee"] by Quinault and other unsecured creditors. In July 1975, Trustee filed suit on behalf of the bankrupt against Aetna Business Credit, Inc. [Aetna Business Credit, Inc. later became known as BarclaysAmerican/ Business Credit and will be referred to as "BarclaysAmerican"] and the Citizens and Southern Bank ("C&S") to set aside the transfer of certain property.[2/] The Trustee filed that action at the urging of Quinault's counsel, Mr. Bishop.

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2 A more complete discussion of the facts involved in the bankruptcy case and the plenary action may be found in the briefs filed by Aetna Business Credit, Inc. in opposition to the writ of certiorari in case numbers 80-344 and 80-345.

After the Trustee had conducted an investigation of the claims against BarclaysAmerican, the Trustee determined the claims were unfounded and sought permission of the Bankruptcy Court, Honorable William L. Norton. Jr., to settle those claims for costs. Quinault, and several other unsecured creditors of Georgia Paneling, objected to the settlement. Quinault also sought to intervene in the lawsuit in order to assert claims of its own against BarclaysAmerican and C&S.

On June 17, 1976, settlement between the Trustee and BarclaysAmerican was approved by the Bankruptcy Court, which determined that no facts existed to support a recovery by the Trustee against BarclaysAmerican. Quinault appealed this order to the United States District Court, Honorable Richard C. Freeman. The

District Court affirmed the order of settlement on April 15, 1977.

In the meantime, Quinault had been allowed to intervene as a plaintiff in the suit filed by the Trustee against Barclays-American and C&S, to assert the same claims that the Trustee had asserted, as well as certain state law claims. Quinault sought to recover from Barclays-American and C&S, inter alia, the sum of $12,974.89 for goods it sold to Georgia Paneling but for which it was not paid.

On May 31, 1977, Quinault moved, pursuant to Rule 60(b), Federal Rules of Civil Procedure, the District Court to set aside its order affirming the settlement between the Trustee and BarclaysAmerican. The Rule 60(b) motion was denied by the Bankruptcy Court, to whom it had been remanded, on December 20, 1977. On appeal by Quinault, the District Court affirmed this decision on June 26, 1978.

BarclaysAmerican applied for an assessment of the legal expenses it had incurred in defending the settlement agreement against the frivolous and vexatious attacks of Quinault. Because Quinault's opposition to the proposed settlement had been vexatious and oppressive, the Bankruptcy Court, on June 7, 1978, ordered Quinault, and the other intervenors, to pay the sum of $5,146.50 to BarclaysAmerican, and made similar awards to the Trustee and Trustee's counsel. This order was affirmed by the District Court on August 30, 1978, and, after a rehearing on Quinault's reguest for reconsideration, was reaffirmed on October 13, 1978 and February 20, 1979.

Quinault appealed both the ruling on its 60(b) motion and the award of attorney's fees to the Fifth Circuit Court of Appeals. (Appeal Nos. 78-8283, 78-3370,

79-1076). In its appeals, Quinault set forth the unfounded and slanderous allegations of misconduct and improprieties which it, reasserted in its Petition For Extraordinary Writ and now renews in its Petition For Writ Of Certiorari. Quinault claimed that the Bankruptcy Court and counsel maintained an improper relationship, had committed a fraud on Quinault and on the Fifth Circuit Court of Appeals, had acted improperly and unethically, and that the Bankruptcy Court was partial and unfair. Quinault also accused the District Court of improper conduct.

Quinault charged, inter alia:

> that the bankruptcy judge demonstrated partiality, lacked judicial integrity, and made materially misleading statements. The bankruptcy judge is also alleged to have engaged in

ex parte discussions with appellees and their counsel, permitted orders and an opinion to be drafted and typed by appellees or their counsel, and misrepresented the facts regarding this alleged misbehavior. Appellants also argue that the district judge's affirmance is entitled to no weight because he engaged in various acts of misbehavior.

In Re Georgia Paneling, 607 F.2d 117, 118, reh. granted, 613 F.2d 137 (1979), orig. opin. reinstated, 616 F.2d 893 (5th Cir. 1980), cert. denied, sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981).

The Fifth Circuit Court of Appeals determined:

> A careful examination of the record, especially those portions cited by appellants, reveals no impropriety. The allegations of misconduct are unfounded.

In Re Georgia Paneling, 607 F.2d 117, 118, reh. granted, 613 F.2d 137 (1979), orig. opin. reinstated, 616 F.2d 893 (5th Cir. 1980), cert. denied, sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954. reh. denied, 449 U.S. 1104 (1981).

The Fifth Circuit also addressed the substantive merits of Quinault's 60(b) motion and determined that the motion had been denied properly. In Re Georgia Paneling, 607 F.2d 117, 118. reh. granted, 613 F.2d 137 (1979), orig. opin. reinstated, 617 F.2d 293 (5th Cir. 1980), cert. denied, sub nom Quinault Pacific

Corporation v. Aetna Business Credit, Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981).

The Fifth Circuit Court of Appeals also addressed the allegations of impropriety raised on appeal in the attorney's fees case and likewise found no impropriety.

> A careful examination of the record convinces us that appellants have failed to demonstrate judicial impropriety. Their brief does not accurately construe the record, and on more than one occasion conclusory allegations are made without reference to supporting evidence.

In Re Georgia Paneling Supply, Inc., 607 F.2d 1004 (unpublished opinion), (Table November 9, 1979), reh. granted, 613 F.2d 512 (Table, December 28, 1979), orig. opin. reinstated, 617 F.2d 293 (5th Cir.,

Table 1980), cert. denied, sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S 954. reh. denied, 449 U.S. 1104 (1981).

Moreover, the Fifth Circuit Court of Appeals determined that Quinault was guilty of bad faith, vexatiousness and oppressive tactics and affirmed the award of attorney's fees. In Re Georgia Paneling Supply, Inc., 607 F.2d 1004 (unpublished opinion), (Table November 9, 1979), reh. granted, 613 F.2d 512 (Table, December 28, 1979), orig. opin. reinstated, 617 F.2d 293 (5th Cir., Table 1980), cert. denied, sub nom Quinault Pacific Corp. v. Aetna Business Credit, Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981).

Quinault then petitioned for certiorari asserting again the unfounded and slanderous allegations against the

Bankruptcy Judge, the District Judge and counsel. Quinault Pacific Corporation, v. Aetna Business Credit. Inc., Petitions For Writ Of Certiorari, Nos. 80-344 & 80-345, October Term, 1980. This Court denied the Petitions for Writ of Certiorari and requests for rehearing. Quinault Pacific Corp. v. Aetna Business Credit Inc., 449 U.S. 954, reh. denied, 449 U.S. 1104 (1981).

Quinault's claim that Barclays-American should pay it the sum of $12,974.89, and other damages, for goods Quinault sold to Georgia Paneling, proceeded to trial before the Honorable Richard C. Freeman and a jury in October 1981. After two days of trial, Quinault settled its claims against Barclays-American and C&S and the parties executed general releases. (A copy of the General Release executed by Quinault is reproduced

in Appendix A-1 hereto). With the consent of Quinault and its counsel, Quinault's claims against BarclaysAmerican were dismissed, with prejudice, on February 5, 1982. (A copy of the dismissal is reproduced in Appendix A-2 hereto). No appeal was taken from the dismissal of Quinault's claims.

SUMMARY OF ARGUMENT

Quinault's Petition For Writ of Certiorari does not present a case or controversy to this Court for review. The issues are moot since Quinault has settled all of its claims against BarclaysAmerican and its case has been dismissed with prejudice. The issues raised by Quinault have been decided previously by the Fifth Circuit Court of Appeals and this Court, whose decisions constitute the law of the

case. Quinault's renewed accusations do not present any issue on which there are conflicting appellate decisions, nor do they present an important question of federal law which has not been, but should be, settled by this Court. Finally, this matter is not properly before this Court because Quinault did not file a timely notice of appeal from any order or judgment subject to review.

REASONS FOR DENYING THE WRIT

A. THERE IS NO CASE OR CONTROVERSY PENDING ON WHICH THIS COURT SHOULD ACT.

Article III of the Constitution of the United States establishes and limits the judicial powers of the Courts of the United States. This Court will act only

on matters which present a "live case or controversy before this Court. . . ." Kremens v. Bartley, 431 U.S. 119, 128-29, 52 L.Ed.2d 184, 97 S.Ct. 1709 (1977). This Court has held that the settlement of a case by the parties thereto renders the case moot. Verret v. Oil Transport Co., 365 U.S. 768, 6 L.Ed.2d 83, 81 S.Ct. 911 (1961) (per curiam); J. Aron & Co. v. Mississippi Shipping Co., 361 U.S. 115, 4 L.Ed.2d 148, 80 S.Ct. 212 (1959) (per curiam); See also, In Re: S.L.E., Inc., 674 F.2d 359, 362-364 (5th Cir. 1982).

The case at bar presents no case or controversy. Quinault settled its claims with BarclaysAmerican on October 21, 1981, and the parties executed mutual and general releases. (Appendix A-1). Mr. Johnson, Quinault's president, executed, on behalf of Quinault, a release which provides in part that Quinault did:

> RELEASE, ACQUIT AND FOREVER DISCHARGE C&S AND BARCLAYS . . . from any and all claims . . . known or unknown, of any kind or character that . . . Quinault . . . ever had or on the date hereof may have against either Barclays or C&S by reason of the alleged acts, transactions, or occurrences that are described in any complaint, amended complaint, motion, brief or any other document filed in the aforesaid civil action at any time. . . .

(Appendix A-1)

Mr. Bishop recognized that all of Quinault's claims had been settled and stated in pleadings filed with the District Court:

> Mr. Bishop having consented to substitution of counsel and discharge of bond, and having elected not to

assert a lien herein for attorneys' fees in this case, and all parties and their counsel having consented to dismissal of the case efficient administration of justice would be served by finally closing, for good, this case.

(Petition For Extraordinary Writ, p. 347)

On February 5, 1982, the trial court entered an Order, with the consent of Quinault, dismissing its claims against BarclaysAmerican, with prejudice. (Appendix A-2). Thus, there is no case or controversy pending and the issues presented are moot.

B. THERE IS NO GROUND ON WHICH THE LAW OF THE CASE SHOULD BE ABROGATED.

The law of the case has been established. There were no grounds upon

which to grant Quinault's 60(b) motion; Quinault's conduct was vexatious and oppressive justifying the award of attorneys fees; and there was no judicial impropriety.

Quinault seeks to have this Court vacate the law of the case established almost three years ago in cases which are now closed. The law of the case cannot be reversed. Drachenberg v. Canal Barge Co., 621 F.2d 760, 762, reh. denied, 626 F.2d 172 (5th Cir. 1980). Quinault is bound by the findings of fact and conclusions of law made by the court of appeals in its prior appeals unless: "(1) a subseguent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to that issue, or (3) the prior decision was clearly erroneous and would work a manifest injustice." United States

v. Robinson, 690 F.2d 869, 872 (11th Cir. 1982) Quinault does not suggest, nor do the facts support, that any of the exceptions apply to the matter at bar.

> The "law of the case" rule is based on the salutary and sound public policy that litigation should come to an end. It is predicated on the premise "there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions or speculate of chances from changes in its members," [fn] and that it would be impossible for an appellate court "to perform its duties satisfactorily and efficiently" and expeditiously "if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal" thereof. [fn]

White v. Murtha, 377 F.2d 428, 431 (5th Cir. 1967).

The matter at bar demonstrates the necessity of this doctrine. Even Quinault has given lip service to the importance of finality in the litigation process: "There should be an end to litigation: a litigant is entitled to one, but only one, "day" in court. Settlement of complex litigation achieving finality should be encouraged." Reply Brief of Quinault, p. 6, filed September 11, 1979, Case No. 78-3370, In Re Georgia Paneling, (Fifth Circuit Court of Appeals).

Quinault raised the same issues of alleged impropriety of the court and counsel in the numerous briefs it filed with the Fifth Circuit Court of Appeals and the Supreme Court in the earlier appeals. Quinault devoted over 60% of the 285 pages of argument in those briefs to

its unfounded claim that the orders of the Bankruptcy Court and the District Court should be reversed because of partiality and impropriety. The Fifth Circuit Court of Appeals addressed this issue and found no impropriety. More importantly, the Fifth Circuit Court of Appeals determined that the decisions of the lower courts were proper. In short, Quinault had its day in court on its 60(b) motion and on the assessment of expenses against it and it is not entitled to a second bite.

C. THERE IS NO CONFLICT AMONG THE COURTS OF APPEAL AND NO IMPORTANT QUESTION OF FEDERAL LAW IS PRESENTED WHICH THIS COURT SHOULD SETTLE.

Quinault has alleged, but never provided any citations to support its claim, that a conflict between circuits

existed on the issue of whether attorney's fees should have been assessed against it. There is no such conflict.

Quinault's renewed allegations and slanderous accusations do not present an important question of federal law which has not been, but should be, settled by this Court.

D. QUINAULT HAS NOT TAKEN A TIMELY APPEAL FROM ANY JUDGMENT, ORDER OR DECREE WHICH IS SUBJECT TO REVIEW.

The United States Code provides, in part, that "no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed within thirty days after the entry of such judgment, order or decree." 28 U.S.C. § 2107.

The failure to file a timely notice of appeal requires dismissal of the appeal. Lathrop v. Oklahoma City Housing Authority, 438 F.2d 914 (10th Cir.), cert. denied, 404 U.S. 840, 30 L.Ed.2d 73, 92 S.Ct. 132 (1971). In the case at bar, the last order entered was the order dismissing, with prejudice, Quinault's claims. This order was filed on February 5, 1982. Quinault filed no appeal from the order and took no action whatsoever until over fifteen months later, when it filed the Petition For Extraordinary Writ. Since Quinault did not file a timely notice of appeal seeking review by the Court of Appeals, it may not present this case to this Court.

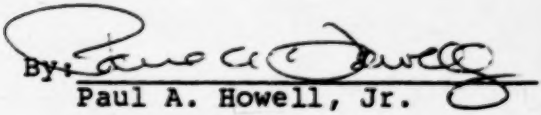
CONCLUSION

For the foregoing reasons, Quinault's

Petition For Writ Of Certiorari should be denied.

Respectfully submitted,

KUTAK ROCK & HUIE

By: 
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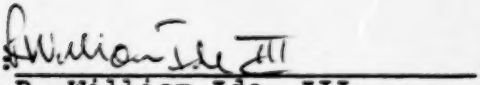
By: 
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APPENDIX

RELEASE

WHEREAS, International Paper Company, Gold Rey Forest Products, Inc., Quinault Pacific Corporation and White Lumber Sales Company (hereinafter collectively referred to as "Plaintiffs") are Plaintiffs in a certain civil action for damages styled, International Paper Company, et al. v. Aetna Business Credit, Inc. and The C & S Bank of North Fulton, being Civil Action File No. C75-1540A, wherein Plaintiffs seek to recover from Aetna Business Credit, Inc. ("Aetna") and The C & S Bank of North Fulton (hereinafter collectively referred to as "Defendants") the amount of the purchase price of certain goods sold by Plaintiffs to Georgia Paneling Supply, Inc. for which Plaintiffs did not receive payment and other damages; and

WHEREAS, Defendants have disputed and continue to dispute the claims asserted

against them by Plaintiffs and Aetna has filed a counterclaim for attorneys' fees in said action against Plaintiffs; and

WHEREAS, Plaintiffs have disputed and continue to dispute the counterclaim asserted against them by Aetna; and

WHEREAS, The Citizens and Southern National Bank ("C&S") has assumed the liabilities and owns all of the assets of The C & S Bank of North Fulton; Barclays American/Business Credit, Inc. ("Barclays") has assumed the liabilities and owns all of the assets of Aetna which at the time Barclays' acquired same included the Aetna claims as herein described against Plaintiffs; The Flintkote Company ("Flintkote") has assumed the liabilities and owns all of the assets of White Lumber Sales Company; ICG Vista Petroleum Ltd. ("ICG") has assumed the liabilities and owns all the assets of

Gold Rey Forest Products, Inc.; and the parties desire to settle all claims and demands that each of them may have against the other that are described in the aforesaid civil action or that arose in or are connected in any way therewith.

NOW, THEREFORE, for and in consideration of the mutual releases contained herein, and other valuable consideration, the receipt and sufficiency of which is severally acknowledged, the parties hereto agree as follows:

1.

International Paper Company ("International"), ICG, Flintkote and Quinault Pacific Corporation ("Quinault") hereby jointly and severally, for themselves and their respective predecessors, successors, assigns, parent companies and subsidiary companies, now and forever, RELEASE, ACQUIT and FOREVER DISCHARGE C&S

and Barclays, jointly and severally, and their respective predecessors, successors, assigns, parent companies, and subsidiary companies, from any and all claims, demands, actions, causes of action, debts, reckonings or rights, whether at law or in equity, known or unknown, actual or contingent, of any kind or character that International, ICG, Flintkote and Quinault, their predecessors, successors, related companies or any of them, ever had or on the date hereof may have against either Barclays or C&S by reason of any of the alleged acts, transactions, or occurrences that are described in any complaint, amended complaint, motion, brief or any other document filed in the aforesaid civil action at any time, including, without limitation, any claims for attorneys' fees and costs and any breaches of any alleged settlement agreement made

at any time between or among any of the parties hereto.

2.

Barclays and C&S hereto jointly and severally, for themselves and their respective predecessors, successors, assigns, parent companies and subsidiary companies, now and forever, RELEASE, ACQUIT and FOREVER DISCHARGE International, ICG, Flintkote and Quinault, jointly and severally, and their respective predecessors, successors, assigns, parent companies and subsidiary companies from any and all claims, demands, actions, causes of action, debts, reckonings or rights, whether at law or in equity, known or unknown, actual or contingent, of any kind or character that Barclays and C&S, their predecessors, successors, related companies or any of them, ever had or on the date hereof may have against

International, ICG, Flintkote and Quinault, or any of them, for attorneys' fees or costs incurred by C&S, Barclays, their predecessors, successors or related companies in the defense of the aforesaid civil action or arising out of any act, activity, statement or position heretofore taken or made that is in any way related to the aforesaid civil action or is in any way thereto connected, involved or related.

3.

It is agreed and fully understood that neither this Release nor the consideration given hereunder is or is in any way to be construed as an admission of liability or wrongdoing on the part of any signatory hereto or such signatory's predecessors in interest.

4.

Each of the parties hereto do hereby represent, warrant and affirm that the

execution of this Release has been duly authorized and that the individual person signing on behalf of each of them has the requisite authority and approval to do so; that, by so executing this Release, the provisions hereof are adopted by and become the act and deed of each of them; that, before executing this Release, each of them fully informed itself of the terms, contents and effects hereof and has had the benefit of the advice of attorneys of its own choosing; that each of them fully understands that the consideration given hereunder is all of the consideration that is ever to be given to any of them for their execution of this Release; that none of them have transferred, assigned or pledged to any person or entity whatsoever any claim that it releases herein; that it is the owner of the claim that it releases herein.

5.

This Release may be executed in six counterparts and each counterpart, when signed, shall be fully binding upon each of the parties hereto.

6.

This Release shall be governed in all respects by and construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto have caused this Release to be signed, sealed and delivered by their duly authorized representatives, as of the 21st day of October, 1981.

BARCLAYS AMERICAN/BUSINESS CREDIT, INC. (Successor in interest to Aetna Business Credit, Inc.)

[CORPORATE SEAL]

By /s/ Rick Polivy

Its: Sr V P

THE CITIZENS AND SOUTHERN NATIONAL BANK (Successor in interest to The C & S Bank of North Fulton)

[CORPORATE SEAL]

By /s/
Its: Sr Vice President

INTERNATIONAL PAPER COMPANY

[CORPORATE SEAL]

By /s/
Its: Vice President

THE FLINTKOTE COMPANY (Successor in interest to White Lumber Sales Company)

[CORPORATE SEAL]

By /s/
Its: Vice President

ICG VISTA PETROLEUMS LTD. (Successor in interest to Gold Rey Forest Products, Inc.)

[CORPORATE SEAL]

By /s/
Its: Vice President

QUINAULT PACIFIC CORPORATION (Successor in interest to Versapanel, Inc.)

[CORPORATE SEAL]

By /s/ A. R. Johnson
Its: President

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

INTERNATIONAL PAPER COMPANY, et al.,	)	
Plaintiffs,	)	CIVIL ACTION
v.	)	FILE NO. C75-1540A
AETNA BUSINESS CREDIT, INC., et al.,	)	
Defendants	)	

ORDER

Upon the consent of the parties, as shown by the signatures below of their respective attorneys of record, it is hereby:

ORDERED that Plaintiffs' Third Amended Complaint and all other complaints herein against Defendant THE C&S BANK OF NORTH FULTON are hereby dismissed WITH PREJUDICE; and it is further

ORDERED that Plaintiffs' Fourth Amended Complaint and all other complaints herein against Defendant AETNA BUSINESS CREDIT, INC. are hereby dismissed WITH PREJUDICE; and it is further

ORDERED that neither Defendant C&S nor Defendant AETNA shall seek to recover, nor shall they recover, from Plaintiffs herein any attorneys' fees or costs incurred by said Defendants in this case; and it is further

ORDERED that the counterclaim of Defendant AETNA, to the extent it has not already been dismissed by the Court's prior orders, is hereby dismissed WITH PREJUDICE; and it is further

ORDERED that the parties to this case shall bear their own costs in this case and no party shall seek to recover, nor shall they recover, from any other party

any costs or attorneys' fees incurred by such party herein.

So ordered, in Atlanta, Georgia, this 5th day of February, 1982.

/s/
RICHARD C. FREEMAN, United States District Court Judge

The above and foregoing Order is hereby consented to:

KUTAK ROCK & HUIE

By: /s/
C. Edward Dobbs

Attorneys for Aetna Business Credit, Inc.

ALSTON, MILLER & GAINES

By: /s/
William C. Humphreys, Jr.

Attorneys for The C&S Bank of North Fulton

TROTTER, BONDURANT, MILLER & HISHON

By: /s/
Jeffrey M. Smith

Attorneys for International Paper Company

GREENE, BUCKLEY, DeRIEUX & JONES

By: /s/
Gregory J. Digel

Attorneys for Quinault Pacific Corporation (successor in interest to Versapanel, Inc.), The Flintkote Company (successor in interest to White Lumber Sales Company), and Gold Rey Forest Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing BarclaysAmerican/Business Credit, Inc.'s Brief In Opposition To Petition For Certiorari, with the Appendix modified pursuant to the Court's request, were served upon the following people by depositing copies of same in the United States Mail, with adequate postage prepaid and properly addressed to:

W. Kent Bishop
1835 First Atlanta Tower
Two Peachtree Street, N.W.
Atlanta, GA 30383

John C. Pennington
c/o Pennington, Goetz & Cronkright
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Freeman & Hawkins
c/o Paul W. Hawkins, General Partner

First Atlanta Tower
28th Floor
Two Peachtree Street, N.W.
Atlanta, GA 30383

Copies of the Brief In Opposition To Petition For Certiorari, with the original Appendix, were served on the foregoing persons on November 23, 1983.

This 2 day of December, 1983.

Paul A. Howell, Jr.

KUTAK ROCK & HUIE
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